

Book Reviews

Follow this and additional works at: <http://scholarship.law.cornell.edu/clr>

 Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 2 Cornell L. Rev. 157 (1917)

Available at: <http://scholarship.law.cornell.edu/clr/vol2/iss2/4>

This Book Review is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

Book Reviews

Handbook of the Law of Wills. By George E. Gardner, professor of law in the Boston University School of Law. Second Edition. By Walter T. Dunmore, professor of law in the Western Reserve University Law School. Hornbook Series. St. Paul. West Publishing Company. 1916. pp. xiii + 641.

This volume follows the customary plan of all volumes in the Hornbook Series. The leading principles are set forth in black letter, the statement of the principle in each instance being followed by the more detailed explanatory text, notes and cases.

The first edition was published in 1903 and is now well known both to practitioners and students. The present edition follows in all particulars the scope of the earlier one, and introduces no entirely new topics. The primary purpose of the second edition has been to incorporate into the book a reference to those cases which have been decided during the twelve years since the publication of the original edition. But slight changes have been made in the text, but the notes have been modified frequently and a considerable number of notes added. Throughout the book the cases cited which appear in Dunmore's Cases on Wills are printed in capitals. In addition to official citations, references are made whenever possible to the reports of the National Reporter System and the various series of selected cases.

It has been well said that "a book that has been carefully developed and wrought out is generally better than one written to order to fill a list." So also it may be said that the individuality of an effective law writer may be smothered by his endeavor to follow the instructions of his publishers which prescribe not only the general plan of the work, but also the set form into which the completed work must be made to fit.

Notwithstanding the fact that this book was written to fill a list and the further fact that the author was obliged to mold his material according to a prescribed formula, the work evidences a careful examination of the adjudicated cases for the purpose of stating the leading principles of the law of wills. Moreover, an examination of the present edition leads one to conclude that the recent reports have been thoroughly examined for the purpose of gathering the latest pronouncements of the courts in their endeavor to apply the principles which have been deduced.

By its statement of principles the book will prove of value to the student, and particularly by its notes and references to the adjudicated cases it becomes a working tool which the practitioner may use with profit.

C. T. Stagg.

Magna Carta and Other Addresses. By William D. Guthrie, LL.D., Ruggles Professor of Constitutional Law, Columbia University. 12mo. 282 pages. Columbia University Press; New York. 1916.

This little book is not to be taken too seriously. It is merely a collection of addresses delivered upon a variety of occasions during the years 1906-1915, and touching upon matters of more or less public interest. The addresses appear to be the simple and easy productions of a person skilful in expression and confident of the value of his opinions. They reflect quite accurately the point of view of many if not most of the members of the legal profession, and students of the social sciences need not look to them for anything helpful or instructive. The book may have some value merely as the expression of the opinions of a frank and skilful writer and of a clever lawyer but it has little value of any other sort. In method and in judgment it is entirely unscientific.

To take some of the lesser addresses first. It requires a confident spirit to print in this formal manner the remarks addressed to the Anglo-French Credit and Finance Commission in 1915. The suggestion that the army and navy of Italy might prove decisive in the war is just as valuable as the speaker's conviction that French aid to the United States between 1776 and 1781 was disinterested; that the noblest and the most truly glorious page in the history of England was written by Sir Edward Grey when he refused to break the plighted faith of England to avoid a war which might involve the ruin of the British Empire; that a British army was sent into Belgium to die for strangers; and that England's participation in the war arose from a magnificent and unselfish heroism. Many readers, including the reviewer, may hope this is true but one does not need to be pro-German to find himself suspicious of mental processes that result in such opinions.

It is difficult, indeed, to deal satisfactorily with a book that contains so much bald assertion and confident opinion. Readers will protest against the views in the address on Catholic Parochial Schools and wonder how the author has managed to escape every modern influence in the fields of education and politics, but in a matter of this sort tolerance of his opinion is polite and necessary. Fortunately we are not under obligation to extend the same tolerance to his views on Nominating Conventions. When the reader discovers that the privilege of nominating elective state officers by means of delegate conventions ought, in the judgment of Mr. Guthrie, "to be recognized as essentially a constitutional right, which the legislature should not be at liberty to abridge" he has a fair measure of Mr. Guthrie's political views. It is enough to say that Mr. Guthrie would crystalize and protect every conservative tradition by means of "constitutional rights" and leave to the lawyers and the jurists the simple task of saving a democracy from injuring itself by change.

This ultra-conservative note pervades all of the addresses and notably the one devoted to Constitutional Morality, a criticism of the methods employed by Mr. Roosevelt in the campaign of 1912. We are

accustomed to Mr. Roosevelt's intemperate way of discussing public questions and many of us must sympathize with any desire on the part of Mr. Guthrie to set him right. What Mr. Guthrie apparently does not see is that, quite irrespective of the details of the Ives case, the thing at which Mr. Roosevelt was aiming was the sort of mental operations on the part of lawyers and judges that Mr. Guthrie exhibits so well in this book. Had Mr. Roosevelt had this neat little volume before him he could hardly have survived. What "We lawyers" are exhorted to do in this address is precisely what Mr. Roosevelt was determined they should not do and one does not need to be willing to vote for him to sympathize with his views on this point.

Julian P. Bretz.

Readings on the Relation of Government to Property and Industry.

Samuel P. Orth. Ginn and Co.: Boston. 1916. 8vo. 664 pp.

The publication of volumes of selections designed for supplementary reading in colleges is so common, and the character of such volumes so definitely established that one rather regrets the necessity of placing this volume in such company. It is indeed a volume of selections, but it gives a reader the impression of a careful review of present tendencies in current thought by a judiciously objective writer. There is rarely anything to remind one of the diverse authorship, for there is an element of continuity in the development of the analysis that makes the book seem to be the work of one mind. A psychologist might, indeed, discover evidence of that community of purpose from which the work of many minds gradually assumes the coherence usually associated with the work of a single individual. It is indeed a triumph of editing to make an interesting and significant book out of scattered articles taken from law reviews and other periodicals.

The first hundred pages is devoted to a critical review of recent tendencies in jurisprudence and legislation. The more notable articles are by President Hadley, Jesse F. Orton, F. J. Stimson, and Roscoe Pound. There are, of course, diversities of view represented, but the arrangement of the articles makes this difference of view seem to be merely parts of the shifting emphasis necessary in analyzing so complex a matter. The complexity of the position of our judges is brought out in clear relief as a dilemma, so that the discussion does not seem aimless. This discussion is followed by about seventy-five pages on the Police Power; a general discussion, hardly more discursive than one might find in a rather objective treatise, is followed by two articles on the relation of the Supreme Court to the Police Power which are designed to show that the Supreme Court has pursued a liberal policy. This defense of the Supreme Court displays such conviction that one becomes conscious of a divergence from the radical views of Roscoe Pound's article. A critical study of tendencies in modern jurisprudence would, however, be obliged to introduce these divergent opinions and from that point of view there is no significant break in continuity.

The portion of the volume devoted to corporations fails to maintain the sense of systematic treatment. The articles chosen are significant, but one is distinctly conscious of their fragmentary character. The articles on commissions cover the general ground more comprehensively and despite divergences in opinion present a survey of the problems that has coherence. The material on labor legislation, employer's liability, and labor unions, while significant, is inevitably somewhat discursive. The text is brought to a close by a group of significant papers on the constitutional limits of federal powers of regulation. Excerpts are given from the testimony at the hearings before the Interstate Commerce Commission in 1912, and also the text of the Federal Trade Commission Act and the Clayton Act.

The volume thus preserves from the oblivion of periodicals a considerable number of significant articles which acquire added meaning in relation to each other. The modest volume of selections becomes in fact a cautious review of current tendencies towards socialization of law and the enlargement of the scope of magisterial authority.

Abbott Payson Usher.

The Law of the Public School System of the United States. By Harvey Cortland Voorhees. Boston: Little Brown and Co. 1916. pp. xi, 429.

The law pertaining to the administration and maintenance of the public school system, the rights and privileges of pupils in the public schools and the duties and obligations of parents as to school attendance of their children is largely statutory. It is therefore difficult to disassociate adjudicated cases from the statutory enactments under which they were determined and declare general principles based upon such cases which will have controlling force in every jurisdiction. Mr. Voorhees in treating the law of the Public School System of the United States has recognized the condition, for which he has stated consistently that the rules laid down are dependent upon specific statutory provisions under which the cases cited as authorities arose and were determined. It is obvious that the user of the book must bear this in mind in applying the various principles to a particular question.

The organization of the school system in all states involves the creation of school units of variable territorial extent. Such units are established for the convenient school accommodation of the children therein, to provide financial resources for the maintenance of schools and to furnish a means of administration. In some states the country is the unit, in others, the town, and in many others special districts are created, made up of parts of a town or towns, in each of which at least one school is established. In nearly all states, villages and cities are recognized as independent school organizations, with the power to establish and maintain as many public schools as are required. There are many thousands of such school units (New York has more than 10,000, exclusive of cities and villages) each with a corps of school officers and a separate govern-

mental organization, having delegated authority to raise and expend public money.

Having in mind the prevailing method of school administration and the great number of persons officially connected therewith, it is not difficult to understand the frequency of school litigation in the courts and the minuteness of detail involved in the judicial settlement of school controversies. It should be noted that of the 1600 or more cases cited by the author, about 60 are New York cases, and yet the official records of the State Education Department show that more than 6000 cases, covering substantially every phase of school law, have been determined by state superintendents of schools and commissioners of education during the past fifty years. These decisions have the same effect as judicial determinations in New York State, and substantially all of the matters referred to by the author are controlled by such decisions. The comparative infrequency of school litigation in New York courts is directly attributable to the comprehensive and exclusive power conferred by the legislature upon the State Commissioner of Education to determine all controversies in respect to school administration. The nature, effect and desirability of this appellate jurisdiction are set forth with clearness by the Court of Appeals in the case of *People ex rel. Board of Education v. Finley*, 211 N. Y. 51, which case is not referred to by the author.

The subject of public education is of sufficient importance to justify special consideration in a law treatise. Those concerned in the legal side of school administration will find Mr. Voorhee's work interesting and instructive. He has classified his subject in a logical manner. He has indulged frequently in intelligent comment upon rules laid down by the courts. Many of the cases, especially those applying to the admission, discipline and expulsion of pupils, the rights, duties and obligations of teachers, the reasonableness of school regulations, and the prescribing of studies and textbooks have been clearly brought out and are thus made easily available to those engaged directly in school work, who, being laymen, would have difficulty, otherwise, in unearthing them from mountainous digests and encyclopedias.

Other parts of the work, pertaining to the creation and alteration of school districts, powers and duties of school officers, the acquisition, improvement and control of school property, the expenditure of school funds and the levy and collection of school taxes will be useful only in connection with state statutes controlling such subjects. It is certain that the doctrines and rules declared by the author in respect to such matters may not be used as a guide to the school officer in the performance of his duties, without careful consideration of their application to the statutes under which he acts.

On the whole, Mr. Voorhees has accomplished a valuable work. Lawyers who are called upon to aid and advise in the administration of school affairs will be aided materially by what he has done.

Frank B. Gilbert.